

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.4422 of 2009 (O&M)
Date of Decision:27.07.2017

Hem Raj AroraPetitioner
vs.
State of Haryana and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. G.P. Singh, Advocate for the petitioner.

Mr. Saurav Mohunta, DAG, Haryana.

Rakesh Kumar Jain (Oral)

This petition is filed in order to challenge the notice dated 29.01.2009 issued by respondent No.4 in terms of Section 5A(b) of Public Premises Act, 1972 asking the petitioner to remove the double storey shop on the area of 133.5 sq. feet existing on the government land (road). Threatened by the notice, in which only 7 days' time was given to the petitioner, the present petition was filed in which at the time of issuance of notice, eviction of the petitioner was stayed. Ultimately, on 02.03.2012, this petition was admitted and ordered to be listed for final hearing within a period of six months. During the pendency, the petitioner filed an application seeking permission of the Court to lift the level of the shop and to renovate the same in order to save it from rainy water which is allegedly entering into his premises.

During the course of hearing, both counsel for the parties agreed that instead of deciding the application itself, the main writ petition may be heard which is otherwise also at No.992 of the Regular Board of this Court. Accordingly, this case was listed today for regular hearing.

The case set up by the petitioner is that he is the owner of the property in question which falls in Khewat No.610, Khatauni No.87, Khasra

No.339 situated at Village Badshahpur, Tehsil and District Gurgaon. This land is a part of the Delhi Alwar road which is managed by the PWD, Gurgaon. It is submitted by learned counsel for the petitioner that Civil Suit No.241 of 1968 was instituted on 17.03.1963 by the State of Punjab through Collector, Gurgaon in respect of the aforesaid property seeking perpetual injunction for restraining the defendants (petitioner and others) from entering in the title, rights and possession of the suit land. The said suit was dismissed on 16.02.1964 and attained finality. It is also submitted by the petitioner that he had to purchase the same land again, which had earlier been purchased from the erstwhile owners, when the Gram Panchayat claimed its ownership. The resolution in this regard was passed by the Gram Panchayat on 09.08.1970 and the petitioner had purchased by spending ₹1,200/-. On the other hand, learned counsel for the respondents has submitted that the respondents are not interfering in the land falling in Khasra No.339 as the property in question falls in Khasra No.200 as per the jamabandi for the years 1961-1962 and 2005-2006. It is submitted that the disputed land is measuring $3.03 \times 11 = 36-30$ Sq. Meters meters on which the petitioner has unauthorisedly built the double storey shop which is located on the berm of the road linking Delhi and Alwar.

Counsel for the respondents has tried to explain the ownership of the PWD on the basis of the Musani alleging that it was a “Gair Mumkin” (road).

After hearing learned counsel for the parties, I have suggested that it would be just and expedient if the order dated 29.01.2009 (Annexure P.4) which has been impugned is deferred and the petitioner is given an

opportunity of hearing by the respondent, and also access to the record of the land in question so that the competent authority may apply its mind on the facts and the ground realities existing at the spot. Both the counsel for the parties have suggested that the matter may be put up before the Superintending Engineer instead of SDE.

Keeping in view the aforesaid facts and circumstances, the present petition is thus hereby disposed of with a direction that the parties would appear before the Superintending Engineer, Circle – I, PWD Department, Gurgaon Circle on 11.08.2017. The said authority would fix a date for hearing of the case and also allow the petitioner to inspect the record before making their submissions and the said authority shall refer to the arguments and the documents relied upon by both the sides before passing a well reasoned order. The entire exercise shall be completed on or before 30.09.2017. Till then, stay granted by this Court shall remain in operation and the impugned order shall remain deferred.

It is needless to mention that if it is required, since the issue is with regard to identification of the land, the demarcation of land in khasra Nos.339 and 250 may also be got done with the help of the revenue authorities in which the petitioner has to be essentially associated and in case, the decision goes against the petitioner then it would remain in abeyance for three weeks.

July 27, 2017
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(Rakesh Kumar Jain)
Judge

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No